

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

ROBERT T. ALMY, on)
 behalf of himself and all other persons)
 similarly situated known and unknown,)
) Case No. 08 C 2902
 Plaintiff,)
) Judge Dow, Jr.
 v.)
)
 KICKERT SCHOOL BUS LINE, INC.,)
)
 Defendant.)

**AGREED MOTION TO APPROVE FORM OF NOTICE TO SIMILARLY SITUATED
PERSONS PURSUANT TO 29 U.S.C. § 216(b)**

The parties, Plaintiff and Defendant move this Court for an order authorizing notice of this action to be provided to similarly-situated persons, pursuant to the notice provisions of the Fair Labor Standards Act (FLSA), 29 U.S.C. § 216(b). In support of this motion, the parties state as follows:

1. The FLSA, 29 U.S.C. § 216(b), permits a plaintiff to file a collective action, on behalf of himself or herself and other employees similarly situated, to recover unpaid overtime wages and liquidated damages from employers who violate FLSA. *Gambo v. Lucent Techs., Inc.*, 2005 U.S. Dist. LEXIS 37998, at *10-11 (N.D. Ill December 23, 2005)(J. Filip). A prospective member of the collective action may “opt-in” by filing a written consent in the court where the action is brought; a person who does not opt-in is not part of the collective action and is not bound by the court's decision. *Id.*; *Allen v. Marshall Field & Co.*, 93 F.R.D. 438, 441 (N.D. Ill. 1982).

2. The Seventh Circuit has determined that a district court may not prohibit a plaintiff from sending notice altogether. *Gambo*, 2005 U.S. Dist. LEXIS 37998, at *10-11, citing *Woods v. N. Y. Life Ins. Co.*, 686 F.2d 578, 580 (7th Cir. 1982). Beyond that limitation, the Seventh Circuit has not provided guidance on how a district court should exercise its discretion in the notice process. Nevertheless, district courts in the Northern District of Illinois have regularly exercised discretionary authority over the notice process. *Gambo*, citing *Persin v. Careerbuilder, LLC*, 2005 U.S. Dist. LEXIS 29727 (N.D. Ill. Nov. 23, 2005) (Kocoras, C.J.); *Perez v. Radioshack Corp.*, 2003 U.S. Dist. LEXIS 10152 (N.D. Ill. June 13, 2003).

3. Though it does not oppose the sending of Notice, Defendant denies liability in this case. To that end, the parties jointly request the Court approve the form of the Notice and Consent Form attached hereto as Exhibit A. The parties further request that potential opt-in Plaintiffs be given forty-five (45) days from the date the Notice and Consent Form are mailed to return the Consent for filing with the Court.

WHEREFORE, the parties request that this Court enter an order approving the form of the "Notice" and "Consent" as set forth in Exhibit A and directing that those forms be sent to all putative collective action members.

Date: September 8, 2008

Respectfully submitted,

s/Douglas M. Werman
Douglas M. Werman
Maureen A. Bantz
Werman Law Office, P.C.
77 W. Washington, Suite 1402
Chicago, Illinois 60602
(312) 419-1008

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true and correct copy of the foregoing **Agreed Motion to Approve Form of Notice to Similarly Situated Persons Pursuant to 29 U.S.C. §216(b)** was served via electronic mail on September 8, 2008 on:

Harry Sangerman
Sangerman & Gilfillan, P.C.
1854 N. Burling Street
Chicago, IL 60614

s/Douglas M. Werman
Douglas M. Werman

EXHIBIT A

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

ROBERT T. ALMY, on
behalf of himself and all other persons
similarly situated known and unknown,

Plaintiff,

v.

KICKERT SCHOOL BUS LINES, INC.,

Defendant.

Case No. 08 C 2902

Judge Dow, Jr.

NOTICE OF PENDENCY OF LAWSUIT

**TO: ALL SCHOOL BUS DRIVERS WHO WORKED FOR KICKERT SCHOOL BUS LINES, INC.
FROM MAY 19, 2005 TO THE PRESENT.**

**RE: FAIR LABOR STANDARDS ACT LAWSUIT AGAINST KICKERT SCHOOL BUS LINES,
INC. FOR ALLEGED OWED OVERTIME WAGES**

INTRODUCTION

The purpose of this Notice is to inform you of a collective action lawsuit filed on behalf of school bus drivers who claim they were not paid overtime pay for some or all of the time they worked in over 40 hours in the same workweek. This Notice explains how your rights may be affected by this lawsuit, and instructs you on how to join this lawsuit if you want to do so.

DESCRIPTION OF THE ACTION

In this lawsuit, Plaintiff Robert T. Almy asserts that he and other persons who worked for Defendant between May 19, 2005 and the present were not paid overtime wages for time they worked in excess of forty (40) hours per week. Plaintiff alleges that under the Fair Labor Standards Act ("FLSA"), employers are required to pay certain employees "overtime pay" for all time they work over forty (40) hours in any one work week. Plaintiff also claims that he and other employees who were not paid overtime wages are entitled to recover their unpaid overtime pay, liquidated damages, and attorneys' fees and costs.

Defendant denies that it has violated the FLSA, denies that Plaintiff is entitled to any compensation in this lawsuit and claims that its school bus drivers were exempt from overtime compensation. This lawsuit is currently in the early pretrial stage. The Court overseeing this lawsuit has not made any determination whether anyone is entitled to any compensation. The Court will ultimately decide the merits of this case, and how much, if any, overtime wages will be awarded to the class members. Nothing in this Notice should be viewed as an admission of wrongdoing by Defendant. Also, nothing in this lawsuit will affect overtime pay currently being paid to Kickert's school bus drivers.

YOUR RIGHT TO PARTICIPATE IN THIS ACTION

The named Plaintiff in this lawsuit performed the job responsibilities of school bus driver. He seeks to sue on behalf of himself and all other individuals with whom he is similarly situated. Specifically, the named Plaintiff seeks to sue on behalf of any and all individuals who meet the following requirements:

- (a) performed the job duties of school bus driver for Kickert School Bus Lines, Inc. ("Kickert") at any time from September 1, 2005 to the present; and
- (b) were not paid for some or all of their hours worked in excess of 40 hours in a workweek.

If you fit the definition above, you may choose to join this action by mailing, faxing, or emailing the attached Consent Form to Plaintiffs' Counsel for filing with the Court:

Douglas M. Werman
Werman Law Office, P.C.
77 W. Washington, Suite 1402
Chicago, Illinois 60602
Telephone: (312) 419-1008
Facsimile: (312) 419-1025
email: kickertlawsuit@flsalaw.com

The Consent Form must be received by Plaintiffs' Counsel on or before **DATE XX, 2008 (45 days after mailing)** for you to participate in this case. If you fail to return the completed consent form to Plaintiff's counsel by **DATE XX, 2008 (60 days after mailing)**, you may not be able to participate in this lawsuit. This means that you bear the risk of any non-delivery or delay in delivery of the Consent form. It is entirely your own decision whether or not to join this suit. You are not required to join this case by filing your consent or to take any action unless you want to.

EFFECT OF JOINING OR NOT JOINING THIS ACTION

If you join this action, you will be bound by any ruling, judgment, award, or settlement in this case, whether it is favorable or unfavorable. If you do join this lawsuit, your continued right to participate in the case may depend on a later decision by the District Court that you and Plaintiff are actually "similarly situated," in accordance with federal law.

If you choose not to join this lawsuit, you will not be affected by any judgment or settlement rendered in this case, whether favorable or unfavorable to the class. If you choose not to join in this lawsuit, you may file your own lawsuit, either on your own behalf or through an attorney of your own choice.

The attorneys for the class Plaintiff may be entitled to receive the payment of attorneys' fees and costs in this lawsuit should there be a recovery or judgment in Plaintiff's favor. If there is no recovery or judgment in Plaintiff's favor, you will not be responsible for any attorneys' fees. Any payment of attorneys' fees by Defendant to Plaintiff's counsel may be subject to prior Court approval. If there is a recovery, the attorneys for the class may receive a part of any settlement obtained or money judgment entered in favor of all members of the class. By joining this lawsuit, you designate named Plaintiff as your agent to make decisions on your behalf concerning the litigation, the method and manner of conducting this litigation, the entering of an agreement with Plaintiff's counsel concerning attorneys' fees and costs, and all other matters pertaining to this lawsuit. These decisions and agreements made and entered into by the representative Plaintiff will be binding on you if you join this lawsuit.

STATUTE OF LIMITATIONS

If you choose to join this action, you may be able to recover damages if you were improperly denied overtime compensation only for overtime hours worked within two, and in some cases three years of the date your Consent Form is filed. If you choose not to join in this action or file your own action, some or all of your potential claims may later be barred by the applicable statute of limitations.

NO RETALIATION PERMITTED

The FLSA prohibits retaliation against employees for exercising their rights under the Act. Therefore, the Defendant is prohibited from discharging you or retaliating against you in any other manner because you choose to participate in this lawsuit.

YOUR LEGAL REPRESENTATION IF YOU JOIN

If you choose to join this lawsuit, your interests will be represented by the named Plaintiff through his attorneys as counsel for the class. Counsel for the named Plaintiff is:

**Douglas M. Werman
Werman Law Office, P.C.
77 West Washington, Suite 1402
Chicago, Illinois 60602
312/419-1008**

Further information about this Notice or the deadline for filing a Consent form or other questions about this lawsuit may be obtained by writing or telephoning Plaintiff's counsel at the number and address stated above.

THIS NOTICE AND ITS CONTENTS HAVE BEEN AUTHORIZED BY THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS. ALTHOUGH SO AUTHORIZED, THE COURT HAS TAKEN NO POSITION IN THIS CASE REGARDING THE MERITS OF THE CLAIMS OR DEFENSES OF THE PARTIES.

PLEASE DO NOT CALL OR WRITE THE JUDGE ASSIGNED TO THIS MATTER. THE JUDGE CANNOT ANSWER QUESTIONS CONCERNING THIS LAWSUIT OR THIS NOTICE.

******Note: This Second Page Will Not Be Filed With the Court******

NAME: _____ (Print Name)

TELEPHONE NUMBER: _____

ADDRESS: _____

CITY: _____ STATE: _____ ZIP CODE: _____